

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1220

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p/s

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 75-1220

UNITED STATES OF AMERICA
APPELLEE

V.

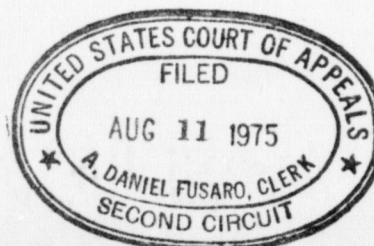
LEO HENDRICKS
APPELLANT

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF CONNECTICUT

APPENDIX FOR THE APPELLANT

Thomas G. Dennis
P. O. Box 52
South Windsor, Ct.

Attorney for
Leo Hendricks



PAGINATION AS IN ORIGINAL COPY

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618

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Stewart H. Jones, US Attorney 450 Main St., Hartford, Conn. Michael Hartmore, Asst. US.
LEO HENDRICKS and EVELYN CORA PARRACINO	
Hendricks	For Defendant: Thomas G. Dennis - Appt. 656 Ellington Road South Windsor, Conn.
Parracino	William P. Murray - Appt. 62 LaSalle Rd. W. Hartford, Conn. 521-7500

[illegible]

DATE	PROCEEDINGS
1973	
12/21	The Grand Jury at Hartford returned a True Bill of Indictment charging violation of 26 USC 5861(d) & 5871 in one count - receive and possess unregistered firearms. Bench Warrants to issue with Bond to be set by Magistrate. (Blumenfeld, J.) m-12/26/73
12/21	Bench Warrants issued in duplicate for each defendant and with certified copies of the indictment handed US Marshal for service.
1974	
1/3	Application for Writ of Habeas Corpus ad Prosequendum and Order, (Newman, J.) m-1/7/74, filed. Two attested copies of Order and two copies of Writ handed US Marshal for service.
1/7	Pleas continued - Court to appoint counsel - Deft. Hendricks presently incarcerated. (Blumenfeld, J.) m-1/8/74
1/11	CJA 20 executed (Blumenfeld, J.) appointing Thomas G. Dennis, Esq. to represent Deft. Hendricks.
1/11	CJA 20 executed (Blumenfeld, J.) appointing William P. Murray, Esq. to represent Deft. Parracino.

DATE 1974	PROCEEDINGS
2/11	PLEA of not guilty to one count Indictment, entered. Standing (Deft. Parracino)
2/19	Order concerning Motions entered orally by Judge Clarie. (Clarie, J.) m2/13/ PLEA of not guilty entered to one count indictment by Deft. Hendricks. Two weeks for motions, Standing Order of the Court re Discovery, etc. invoked. Counsel to comply within two weeks. (Newman, J.) m2/ 2/26 Defendant Evelyn Parracino's Motion To Dismiss the Indictment, filed. 3/20 Court Reporter's Notes of Proceedings held on January 7, 1974, filed in Hartford. (Collard, R.) 4/1 Deft. Parracino's Motion To Dismiss the Indictment, over two weeks. (Blumenfeld, J.) m-4/3/74 3/19 Court Reporter's Notes of Proceedings held on February 11, 1974, filed in Hartford. (Sperber, R.) 3/21 Court Reporter's Sound Recording of Proceedings held on February 19, 1974, filed in Hartford. (Collard, R.) 4/15 Deft. Parracino motion, off. (Blumenfeld, J.) m-4/16/74 3/19 Court Reporter's Sound Recording of Proceedings held on February 1 1974, filed in Hartford. (Sperber, R.) 5/8 Court Reporter's Notes of Proceedings held on February 19, 1974, filed in Hartford. (Collard, R.) 6/13 Notice of Readiness filed by Government. 7/5 Marshal's Executed Return Filed. (Writ of H.C.) 10/23 Call of Jury Trial List - Trial 12/3/74 (Blumenfeld, J.) m10/24/74 11/18 Application for Writ of Habeas Corpus Ad Testificandum and Order, filed in New Haven. (Newman, J.) m-11/18/74. 12/31 Appl. For Writ of Habeas Corpus ad Testificandum, filed. (D. Davis) 1975 12/31 Appl. for Writ of Habeas Corpus ad Testificandum, filed (S. Duffen 1/2 Order for Writ of H.C., filed. (Blumenfeld, J.) m-1/3/75 Two attested copies handed US Marshal at Hartford. 1/2 Order for Writ of H.C., (D. Davis), filed, (Blumenfeld, J.) m1/3/75 1/14/75 JURY TRIAL Voir Dire Requests filed by Attys. for Defs and Govt. Requests to Charge filed by Govt. 37 jurors answer roll call - Voir dire oath administered- 12 jurors and 1 alternate impanelled and sworn. 6 govt witnesses sworn and testified Govt. Exh. 1 and 2 filed (Court Adj. at 4:30 p.m. until tomorrow. (Blumenfeld, J.) 1/15 JURY TRIAL CONTINUES- Court exhibit 1, filed in absence of Jury- Court Reporter sworn and testified - Oral motion of Deft. Hendricks for Mistrial, Denied - Oral motion of Defts. to Dismiss or for Mistrial based on prosecutorial misconduct, Denied - Jury called into Court at 11:15am- Govt. witness recalled and testified - Govt. Witness sworn and testified - Oral motion of Deft. Hendricks for Mistrial based on calim of contradicto statement of Govt. re Grand Jury testimony of Duffen - Dec. Res. - Court grants Motion of Deft. Hendricks for Mistrial - Case continues with one Defendant (Parracino)- Govt. exhibits 3 thru 6, filed. Court adjourned at 4:50pm. (Blumenfeld, J.) 1/16 JURY TRIAL CONTINUES (Deft. Parracino only)- 2 Witnesses, pre- viously sworn, recalled and testified - 3 Govt. Witnesses sworn and testified - Govt. exhibits marked for identification #7 thru 17 then made full exhibits - Govt. rests at 12:45pm - Def's. oral Motions for Acquittal, Denied - Requests to Charge, filed by Deft. Parracino - 3 Deft's. witnesses, sworn and testified - Defense witness recalled and testified - Def. rests at 4:30pm-No rebuttal. Court adjourned at 4:35pm. (Blumenfeld, J.)

DATE	PROCEEDINGS
1975	
1/17	JURY TRIAL CONTINUES (Def. Parracino, only)- Panel of 13/report Arguments from 10:20am to 11:54am - Rebuttal from 12:10pm to 1:32pm - Court Charges from 1:32pm to 2:27pm - Defense objects to Charge on Constructive Possession-At request of defense, Court further instructs jury re "firebomb" at 2:30pm - Exhibits and Indictment given to Jury at 2:35pm - Jury returned at 3:25pm with a verdict of NOT GUILTY. Verdict verified and ordered recorded by the Court - No request to poll jury. Court adjourned at 3:30pm-(Blumenfeld, J.)
1/21	Judgment of Acquittal re Def. Evelyn C. Parracino, filed. Copies sent to Attys. Hartmore and Murray, and Dennis.
1/22	Notice of Readiness, filed by Govt.
1/22	Marshal's return showing service of H.S. D. Davis
2/18	Court Reporter's Transcripts of Proceedings held on January 14, 15, 16 and 17, 1975, filed in Hartford. (Four (4) Volumes.) (Collard, R.)
2/18	Jury Assignment List Cal. - Over to Feb. 27th, 1975, re Leo Hendricks (Blumenfeld, J.)
3/5	(Def. Hendricks') Motion To Dismiss Indictment and Defendant's Brief in Support of Motion To Dismiss, filed.
3/7	Motion To Preclude Testimony, filed by Defendant.
3/13	Government's Brief in Opposition to Defendant's Motion To Dismiss, filed.
3/4	PARRACINO - Magistrate's papers, filed...Record of Proceedings in Criminal Cases and Warrant for Arrest of Deft.(Parker, Mag.)
3/4	HENDRICKS - Magistrate's Papers, filed...Record of Proceedings in Criminal Cases and Warrant for Arrest of Deft. with return thereon. (Parker, Mag.)
3/14	Government's Response To Defendant's Motion To Preclude Testimony, filed.
3/17	Endorsement entered and filed on Motion To Preclude Testimony, "Motion denied. 3/17/75"(Blumenfeld, J.)m-3/17/75 Copies sent to all counsel of record.
"	Endorsement entered and filed on Motion To Dismiss Indictment, "Motion denied. (1) There is not double jeopardy because the def. was granted a mis-trial on def's own motion. (2) "Asides" with respect to other matters not related to evid. concerning def. at grand jury session does not adversely affect the indictment.(3) Govts. notice of readiness for trial was within 6 months!3/17/75(Blumenfeld, J.)m-3/17/75 Copies sent to all counsel of record.
3/17	Hearing on Motion to Preclude Testimony - Grand Jury testimony of Robert Hampp and Jack Barnes on Dec. 20, 1973, filed by Govt. -- Denied.(Blumenfeld, J.) Oral Motion To Dismiss that Govt. was not ready for trial within six months and therefore Indictment should be dismissed, Denied.(Blumenfeld, J.) Defendant's Motion To Dismiss the Indictment (Written), Denied after hearing in Court.(Blumenfeld, J.)
3/18	JURY TRIAL -Voir Dire Questions submitted by Govt. and Def. - Panel of 36 jurors report and sworn on Voir Dire - 12 Jurors and 2 Alternates impanelled and sworn - All witnesses (except case agent) to be sequestered until after testifying - 4 Govt. Witnesses sworn and testified - Govt. exhibits 1(a) thru 1(d), 2 and 3, filed - Deft. exhibit A, filed.(Court adjourned at 4:300.m.(Blumenfeld, J.)
3/19	JURY TRIAL CONTINUES: 14 Jurors report - 5 Govt. Witnesses sworn and testified - Govt. exhibits 4 thru 14, filed - Govt. rests at 12:40p.m. - Oral Motion for Judgment of Acquittal by Def. Denied by

CONTINUED

3/19 Court - Govt. Filed Requests to Charge - Defense commenced at 2:03p.m. -
5 Def. Witnesses sworn and testified - Def. exhibits B-1 thru B-6 and C
filed - Defense rests at 3:45pm - Govt. Commence rebuttal at 4:05p.m.
Govt. rests at 4:15p.m. - Court adjourned at 4:50p.m. (Blumenfeld, J.)

3/20 JURY TRIAL COMMENCES: 14 Jurors report - Govt. summation from
10:01a.m. to 10:18a.m. - Def. summation from 10:18a.m. to 10:50a.m. -
Govt. rebuttal from 10:50a.m. to 11:03a.m. - Court charge from 11:04a.m.
to 11:30a.m. - Jury retired at 11:30a.m. - Def. objected to Court's
Charge re comments on "Fire-bomb" - Jury recalled at 11:33a.m. and
Charge supplemented by Court - Jury retired to deliberate and exhibits
given to jury at 11:40a.m. - At 12:50p.m. request by jury to have Mr.
Duffen's testimony read - At 2:00p.m. Portion of Duffen's testimony
read to jury after which it returned to its deliberations - At 2:15p.m.
Jury returned at 4:20p.m. for Court to answer two questions - Jury
retired again and Def. takes exception to Judge's answers - Jury
returned at 4:40p.m. with verdict of GUILTY - Jury polled at request
of Def. - Govt. requested a bond of \$25,000.00 - Court set a bond of
\$10,000.00 with full surety and will entertain Def's Motion as to kind
of surety other than cash, corp. etc.) Court adjourned at 4:58p.m.
(Blumenfeld, J.)

3/26 Motion For Reduction of Bond with Order thereon, filed. (Blumenfeld,
J.)m-4/2/75 - Court reduced bond to \$10,000.00 with 10% cash surety.
Copies sent to Attys. Dennis and Hartmere.

3/26 Bond in the amount of \$10,000.00 with 10% cash surety, filed.
Surety is Luanna Blagrove. (Blumenfeld, J.)m-4/2/75 (see entry 6/3/75)

3/25 Marshal's executed returns, filed. (Appls. for Writs of H.C.(2)

3/31 Motion For Judgment of Acquittal, filed.

4/2 Endorsement entered and filed on Motion For Judgment of Acquit-
tal, "Motion denied. April 2, 1975." (Blumenfeld, J.)m-4/2/75. Copies sent
to Attys. Dennis and Hartmere.

4/24 Court Reporter's Notes of Proceedings held on March 18, 19 and 20,
1975, filed in Hartford. (Collard, R.)

4/24 Court Reporter's Notes of Proceedings held on January 14, 15, 16
and 17, 1975, filed in Hartford. (Collard, R.)

5/7 CJA 20 executed (Blumenfeld, J.) and Mailed to A.O. for payment.
(Atty Wm. Murray representing Evelyn Parracino)

6/2 DISPOSITION (Hendricks) - 5 years imprisonment. Same bond
pending appeal which Deft's Attorney stated he would file (Blumenfeld, J.)

6/3 Order Approving Change of Surety, filed. (Blumenfeld, J.)

6/3 Bond in the amount of \$10,000.00 with 10% cash surety, filed.
Surety is Mary Hendricks Grissette. (Blumenfeld, J.)m-6/5/75

6/6 Judgment and Commitment, filed. (Blumenfeld, J.)m-6/6/75. Two
attested copies handed US Marshal and copy handed Probation Officer in
Hartford.

6/4 Order for Return of Bond (to Luanna C. Blagrove), filed. (Newman,
J.)m-6/5/75

6/10 Notice of Appeal, filed. Copies sent to counsel of record.

6/10 Certified copy of notice of appeal and docket entries sent
to USCA.

6/10 CJA 21 executed (Blumenfeld, J.) authorizing preparation of
transcript.

6/10 CJA 23, Financial Affidavit, filed.

UNITED STATES DISTRICT COURT

U.S. DISTRICT COURT
HARTFORD, CT. CONN.

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

vs. :

CRIMINAL NO. 4-826

LEO HENDRICKS and
EVELYN CORA PARRACINO :

I N D I C T M E N T

The Grand Jury charges that:

COUNT ONE

On or about the 10th day of September, 1973, at Hartford, in the District of Connecticut, LEO HENDRICKS and EVELYN CORA PARRACINO, co-defendants herein, did wilfully and knowingly receive and possess firearms, that is, two destructive devices (explosive or incendiary fire bombs), which firearms, i.e. destructive devices, had not been registered to either of them in the National Firearms Registration and Transfer Record as required by Chapter 53, Title 26, United States Code; in violation of Sections 5861(d) and 5871, Title 26, United States Code.

A TRUE BILL

Walt J. Hrs. Long
Foreman

STEWART H. JONES
United States Attorney

F. Mac Buckley
F. MAC BUCKLEY
Special Attorney In Charge
D.E.A. Task Force - Hartford
U. S. Department of Justice

I hereby certify that the foregoing is a true copy of the original
filed in the office of the Clerk of the Court
Date: 12/21/73

By: A. J. Celentano
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
VS. : CRIMINAL NO. H-610
LEO HENDRICKS : June 9, 1975

NOTICE OF APPEAL

Notice is hereby given that Leo Hendricks, Defendant
above named, hereby appeals to the United States Court of
Appeals for the Second Circuit from the final judgment
entered in this action on June 2, 1975.

Dated at South Windsor, Connecticut, this 9th day
of June, 1975.

Defendant,
LEO HENDRICKS

BY: THOMAS G. DENNIS
His Attorney
656 Ellington Road
P.O. Box 52
South Windsor, Ct. 06074

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Mar 7 3 55 PM '75
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES OF AMERICA :
vs. :
LEO HENDRICKS :

CRIMINAL NO. H-610 *gao*

MOTION TO PRECLUDE TESTIMONY

The Defendant, Leo Hendricks, respectfully moves the Court to preclude the Government from introducing any testimony of Steven Duffen in any retrial of the above-captioned matter unless and until the Government provides Defendant's Counsel with a complete and accurate transcript of the Grand Jury testimony of said Steven Duffen.

Dated at South Windsor, Connecticut, this 5th day of March, 1975.

DEFENDANT, LEO HENDRICKS

BY:

Thomas G. Dennis
THOMAS G. DENNIS
His Attorney

C E R T I F I C A T I O N

This is to certify that a copy of the foregoing Motion was mailed, postage prepaid to:

Michael Hartmere, Esq.
Department of Justice
Assistant United States Attorney
915 Lafayette Square
Bridgeport, Ct. 06603

Thomas G. Dennis
THOMAS G. DENNIS

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED

MAR 5 11 04 AM '75

CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES OF AMERICA :

VS. :

CRIMINAL NO. H-618 S.M.

LEO HENDRICKS :

MOTION TO DISMISS INDICTMENT

The Defendant, LEO HENDRICKS, moves the Court to dismiss the indictment for the following reasons:

1. A retrial of the Defendant after the declaration of a mistrial because of the Government's negligence would constitute double jeopardy;
2. Certain "off-the-record" discussions between the Government's Attorney and others, presumably concerning possible other criminal conduct of this Defendant occurred in the presence of the Grand Jury and may have prejudiced the Grand Jury so as to cause them to return this indictment;
3. The Government was not ready to properly try this matter within six (6) months from the date of indictment as required by the Second Circuit Rules Regarding Prompt Disposition of Criminal Cases.

Dated at South Windsor, Connecticut, this 4th day of March, 1975.

DEFENDANT, LEO HENDRICKS

By

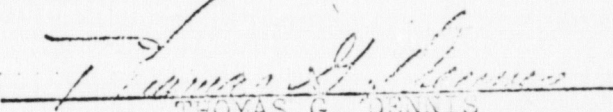
Thomas G. Dennis
THOMAS G. DENNIS
His Attorney

Handwritten notes in left margin:
The indictment is not valid because the defendant was not properly informed of his rights and the nature of the charges against him. The indictment is defective and should be dismissed. The defendant is entitled to a fair trial and the government's negligence in this regard constitutes double jeopardy. The government's attorney's conduct during the proceedings was prejudicial to the defendant's rights. The government was not ready to properly try this matter within the required time frame. The government's failure to do so constitutes a violation of the Second Circuit Rules Regarding Prompt Disposition of Criminal Cases.

C E R T I F I C A T I O N

This is to certify that a copy of the foregoing Motion was mailed, postage prepaid to:

Michael Hartmore
Assistant United States Attorney
915 Lafayette Square
Bridgeport, Connecticut


THOMAS G. DENNIS

THOMAS G. DENNIS
ATTORNEY AT LAW
874 ELLINGTON ROAD
SOUTH WINDSOR, CONNECTICUT 06074

FILED
MAR 17 11 02 AM '75
CLERK COURT
U.S. DISTRICT COURT
BRIDGEPORT, CT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

----- X
UNITED STATES OF AMERICA

VS.

LEO HENDRICKS and EVELYN CORA
PARACINO
----- X

Grand Jury Proceedings
Federal Building
Hartford, Connecticut

Thursday, December 20, 1973

TESTIMONY OF STEVEN P. DUFFEN

A p p e a r a n c e :

F. MAC BUCKLEY, ESQUIRE
Special Attorney
United States Department of Justice
450 Main Street
Hartford, Connecticut

Cunningham & Smith
Reporting Service

1937 ASYLUM AVENUE
WEST HARTFORD, CONNECTICUT 06117

STEVEN P. DUFFEN,

called as a witness by the Grand Jury, being
first duly cautioned and sworn by the Foreman
was examined, and testified on his oath as follows:

EXAMINATION BY MR. BUCKLEY:

Q Would you state your name for the record?

A Steven Peter Duffen.

Q All right. Mr. Duffen, how old are you?

A Twenty-eight.

Q Are you presently incarcerated in the Litchfield
jail?

A Yes.

Q All right. Did you have occasion in November
of 1973 to know one Declan Davis and one Evelyn Paracine?

A Yes.

Q A Lee Hendricks?

A Yes.

Q And Andy Johnson?

A Yes.

Q Did there come a time in November of 1973 --
was it November, was it?

A No. September.

Q That's right. They took the statement in
November.

A November.

1 Q All right. You knew those people in September
2 also?

3 A Yes.

4 Q All right. Was there occasion in September
5 when Mr. Hendricks approached you about fire bombing
6 Deffin Davis's apartment at 195 Washington Street?

7 A Yes.

8 Q All right. Would you tell us what happened?

9 A Well, it was around one o'clock in the morning
10 on September 10th and he came over to my house and asked
11 me if I wanted to go with him to throw a Molotov Cocktail
12 through Deffin's window on Washington Street.

13 Q O.K.

14 A And I was transacting business at the time
15 so I couldn't.

16 Q What business? What?

17 A Nate Jennings who is at the house.

18 Q All right.

19 A So, I couldn't go with him and they said
20 well, come out to the door so first I walked to the door.

21 Q They came to 53 Hamilton Street, your apartment?

22 A Yeah. First I walked to the window and saw
23 Andy Johnson's Cadillac and he was sitting on the passenger
24 side of the car, so he held up a bottle in the window.

25 Q What kind of a bottle was it?

1 A Like an oversized coke bottle but it might
2 have been Miller Hylife, and I went outside and he
3 showed me the bottle. There was another one on the
4 floor of the car and you know, you could smell the
5 gasoline and there was a ripped shirt, but it was late,
6 you know. It was one o'clock in the morning. I said
7 I couldn't go with him and he said that we are going
8 to go over and I will tell you what happens later.

9 About two or three o'clock in the
10 morning, I got a phone call from Deffin. I just got
11 back from the northend. I took Nate home, and she said
12 I just heard that a very dear friend of mine got burnt.
13 Could you call the hospital and find out what happened
14 to him?

15 Q You know what she meant?

16 A Yeah. I know what she meant.

17 Q She at the time had been living with Hendricks
18 and had been living with Davis?

19 A She was living with Davis one time and she
20 moved.

21 Q And you know before she called you and before Lee
22 approached you that they had been busted by Hartford
23 Special Services for drugs?

24 A Well, I was the one that bonded them out.

25 Q That's right. But you know they had been busted

1 and you know that they thought Deffin Davis was the
2 Hartford informant?

3 A Right. Well, we had gone to Deffin's
4 house, you know, about a week before that, the night
5 I got him out on bail on the \$7500.00 bond, the three
6 of them.

7 Q Right.

8 A And we had talked to them about, you know.
9 Well, this was -- it happened September 10th. It was
10 September 8th, I think it was, and talked to him about
11 whether or not he had actually been the informant for
12 the Hartford Police and had got Deffin arrested for
13 paraphernalia, I think, so nothing came to that. We
14 left. So, getting back to September 10th, I called
15 Hartford Hospital. I figured the closest one. First I
16 thought it was they arrested someone, and Hartford
17 Hospital said they didn't have a record of him. Hartford
18 Hospital said that well, Mr. Davis was extremely upset
19 with the way we treated him.

20 Q And he left?

21 A He left. Now, this was 3:30 o'clock, quarter
22 to four in the morning and he said he was going to Saint
23 Francis, the nurse said, so I called Saint Francis
24 Hospital. He hasn't gotten there yet, this was really
25 unusual, so it was. So, that's when they told me he had

1 first and second degree burns of the face, arms, and
2 legs and it was pretty serious and they thought he
3 might have to have an operation on those areas.

4 Q Did you ever talk to Hendricks or Paracino
5 about it afterwards?

6 A I went down to see Evelyn down in Norwich.

7 Q This was when they put her in there?

8 A No. It was the same day Deffin went up to
9 Somers. I went down there and spoke to her and she, you know,
10 went into her tough guy routine, telling her I thought
11 that was going to happen to him and not to play with me
12 and they accused him of fire bombing her house.

13 Q Did she ever say who threw the fire bomb?

14 A Yeah. She said well Lee called her on the
15 phone and said, "Are you going to come down and visit
16 me?" And she said, "I'm not your woman." You know,
17 like we never had anything going.

18 Q Yes.

19 A And I'm going to stay away from you now.
20 You know, she didn't think she had anything to worry
21 about. He was in jail on a \$50,000 bond, I think. So,
22 I spoke to Lee. I had gotten busted.

23 Q Now, Leo is in jail on the arson charge?

24 A Yeah.

25 Q And they didn't catch Evelyn?

1 A Yeah. And I spoke to Leo in jail the night
2 that Grasso got me out, but I had spoken to him and he
3 said do you think Doffin had told me that I was the one
4 that threw it through the window? And I said, gee,
5 I don't know. I have no idea.

6 Q You saw two bottles?

7 A Two bottles. Yeah.

8 Q Do you know how many were thrown?

9 A No. No idea. It was a good shot. I have
10 to give him credit for that.

11 Q Did he ever say he threw it? That's what
12 I'm driving at.

13 A Yeah. We went over there because Red was
14 right up the street. She moved right up the street.

15 Q She moved out of 53 Hamilton?

16 A Yeah. She lives on the bottom floor of
17 Washington Street. She let us in and I went in and
18 looked around and she showed me how much damage was
19 done and she said, "Now see how much space I had to
20 work with?" I looked around. What a mess. It went
21 right up the wall.

22 MR. BUCKLEY: You are excused.

23 (Witness excused.)
24
25

CERTIFICATE

I hereby certify that the foregoing seven pages are a complete and accurate transcription of my original shorthand notes taken of testimony of Steven P. Duffen, in the matter of United States of America vs. Leo Hendricks and Evelyn Cora Paracino, which was heard before the Grand Jury in Hartford, Connecticut on Thursday, December 20, 1973.

Maryann Walk

Maryann Walk
Court Reporter

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- - - - - X

UNITED STATES OF AMERICA :

vs. :

CRIMINAL H-618

LEO HENDRICKS :

- - - - - X

MARCH 20, 1975
HARTFORD, CONNECTICUT

B E F O R E:

HON. M. JOSEPH BLUMENFELD, U.S.D.J.,
and a Jury of Twelve.

A p p e a r a n c e s:

For the Government:

MICHAEL HARTMERE, ESQ.
Assistant United States Attorney
915 Lafayette Plaza
Bridgeport, Connecticut

For the Defendant:

THOMAS DENNIS, ESQ.
656 Ellington Road
South Windsor, Connecticut

PAUL A. COLLARD
OFFICIAL COURT REPORTER
11 11 11

1 THE COURT: Are you ready to proceed, gentlemen?

2 MR. DENNIS: Yes, your Honor.

3 THE COURT: Call the jury.

4 (In the presence of the jury:)

5 THE COURT: You may proceed, Mr. Hartmore.

6 (Mr. Hartmore made a closing statement on
7 behalf of the Government.)

8 (Mr. Dennis made a closing statement on behalf
9 of the defendant.)

10 (Mr. Hartmore made a final closing statement
11 on behalf of the Government.)

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1 THE COURT: Ladies and gentlemen of the jury:

2 The presentation of the evidence in this case
3 and the arguments of counsel have been completed
4 and I shall now charge you on the law as it applies
5 to this case.

6 First of all, I would like to thank you for
7 your attendance and your constant alert attention
8 throughout the trial.

9 It is your duty as jurors to take and to follow
10 the law as the Court states it to you. Appealing
11 as it may be for you to dispense your own individual
12 or collective brand of justice, you are not per-
13 mitted to do that. You have to be governed in your
14 consideration of this case by the law as given to
15 you in the instructions of the Court.

16 To do otherwise would be to have no system of
17 law at all. If we just put up a case to a jury and
18 say: What do you think about it, what do you think
19 ought to be done, and then let the jury go out and
20 decide - that would not be a principled way of
21 administering law. We have laws and those are the
22 laws that must be followed.

23 It is the exclusive province of the jury to
24 determine and to consider what the facts are in
25 this case. You have to consider the evidence in

1 order to determine the facts. And as you have been
2 told, it is your recollection of the evidence that
3 controls - not what counsel have said, or nothing
4 I may say.

5 Sometimes it is difficult to dig through all
6 the evidence and weed it out and get to the bottom
7 of things and find out what the true facts are.
8 But that is your duty and it is well within your
9 capacity to do that. You can determine what the
10 facts are in this case. That is the first thing
11 you should do.

12 Now, the defendant is charged in this indict-
13 ment with violation of a certain section of the
14 federal criminal law. That section provides, and
15 this is the law we are concerned with, that:

16 "It shall be unlawful for any person to receive
17 or possess a firearm which is not registered to him
18 in the National Firearms Registration and Transfer
19 Record".

20 In the first place, there are some elements to
21 proof of a crime that a violation of this law has
22 been committed that you won't have to really spend
23 much time considering. In the first place, it is
24 not disputed that these Molotov cocktails, or fire-
25 bombs, are firearms which are required to be regis-

1 tered under the law.

2 In the second place, it is not disputed - and
3 there is evidence here - that these fire bombs were
4 not registered. So those two elements of the case
5 are really not in dispute.

6 The essential elements, so far as this case is
7 concerned, that you must find or that must be proved,
8 put it that way, by the Government in order to find
9 the defendant guilty is that the defendant knowingly
10 received and possessed a fire bomb and, second,
11 that it wasn't registered. And as I have told you,
12 there is no question here that it has not been
13 registered.

14 So then it boils right down to a very simple
15 issue, so far as the law is concerned, and that is
16 in order to find the defendant guilty you must find,
17 beyond a reasonable doubt, that he, Leo Hendricks,
18 had possession, knowingly had possession of a fire
19 bomb.

20 Now, there is no question he knows what a fire
21 bomb is. At least I don't think that there has been
22 any issue raised as to whether he knew what a fire
23 bomb was. The dispute, or the difference in this
24 case, where the parties have differed, is whether
25 or not he had possession of the fire bomb.

1 The Government does not have to prove that he
2 knew it was unlawful to have a fire bomb without
3 registering. All it needs to prove - but this it
4 must prove beyond a reasonable doubt - is that he
5 knowingly possessed, that he knew he was in posses-
6 sion, that he was in possession and knew he was in
7 possession of a fire bomb.

8 The law recognizes two kinds of possession:
9 Actual possession and constructive possession.
10 In this case there is some evidence - now, it's up
11 to you, as I say, to determine what the facts are -
12 that on one occasion, in the house of Evelyn Parra-
13 cino, that Andrew Johnson came into her room and
14 held up what would appear to have been fire bombs;
15 and when he did, the defendant was right behind him
16 at the time he made this demonstration.

17 There is other evidence that he was in an
18 automobile that he was driving, or that Andrew John-
19 son was driving - depending upon what evidence you
20 accept, if you accept it at all - and that at that
21 time there were fire bombs on the floor of the car.

22 There is also evidence that at one time - I
23 think this was from Andrew Johnson - just shortly
24 before this incident occurred on Washington Street,
25 that Leo Hendricks left the car with the bottles and

1 the rags and the can of Hi-C containing gasoline
2 or kerosene and went off shortly before this fire-
3 bomb incident took place.

4 Well, it is incumbent on the Government to
5 prove that Mr. Hendricks did knowingly possess a
6 fire bomb in order to find him guilty of this
7 offense. There is evidence from which you may find
8 that he had actual possession of it, there is evi-
9 dence from which you may find that he had con-
10 structive possession of it - if the evidence
11 should convince you that he and someone else were
12 working together and did work together in preparing
13 and in taking fire bombs to Washington Street on
14 the night that Daffin Davis' apartment was damaged
15 by throwing a fire bomb into it.

16 At any rate, I have told you what the Govern-
17 ment has to prove, that is, that he was in actual
18 or constructive possession, knowingly, of a fire
19 bomb.

20 Every person accused of a crime is presumed
21 to be innocent of the charges against him as set
22 forth in the indictment. That is not a meaningless
23 thing - a presumption. It is a presumption of
24 innocence that was with him when he was first
25 brought into court and it is with him now and until

1 you find from the evidence, beyond a reasonable
2 doubt, that he is not innocent but is, in fact,
3 guilty of the offense with which he is charged.

4 So the burden of proving that, that he know-
5 ingly had possession of a fire bomb, is on the
6 Government. He doesn't have to disprove the
7 Government's case, he doesn't have to prove his
8 innocence. The Government has to prove that he
9 had knowing possession of a fire bomb around
10 September 9th and 10th of 1973.

11 Now, I haven't tried to influence you in this
12 case about any particular conclusion as to any
13 fact in the case or as to the truthfulness of any
14 witness. It is your duty, without fear and without
15 favor, to determine what the facts are and to re-
16 turn a verdict that justly applies the law to the
17 facts as you find them.

18 The due enforcement of the law is a challenge
19 to our sense of duty. It makes a strong call upon
20 the Court and the jury in every case. But there is
21 another call, and that is to make sure that no de-
22 fendant is found guilty of a crime unless the evi-
23 dence points to his guilt with the degree of cer-
24 tainty which the law requires.

25 So you have to reach your verdict solely upon

1 the evidence presented and under the instructions
2 of the Court. Unless the evidence in support of
3 the charge against the defendant is clear or con-
4 vincing or sufficiently strong, or all three, to
5 convince you beyond a reasonable doubt that the
6 defendant is guilty, you should acquit him. You
7 must acquit him, unless you are convinced that he
8 is guilty.

9 A verdict of guilty is permissible only if the
10 jury's belief of guilt has ripened into a belief
11 beyond a reasonable doubt. So the presumption of
12 innocence, as I have indicated, continues throughout
13 the trial and throughout your deliberations, unless
14 and until it is overcome by the evidence and infer-
15 ences reasonably drawn from the evidence to the ex-
16 clusion of a reasonable doubt.

17 Now, a reasonable doubt is a doubt that is
18 reasonable. It is not necessary for the Government
19 to prove the guilt of a defendant beyond every
20 possible doubt. If that were the rule, few defend-
21 ants would ever be convicted, however guilty they
22 might be. The reason is that in the world we live
23 in it is practically impossible for any controverted
24 fact to be absolutely and completely proved, which
25 by its nature is not susceptible of mathematical

1 certainty. So in a criminal case it is enough that
2 a defendant's guilt has been established beyond a
3 reasonable doubt - not a possible doubt.

4 Of course, you are not entitled to guess or
5 speculate, and it wouldn't be enough for you to
6 say that it is more likely true than not that the
7 defendant is guilty. You have to be convinced so
8 that your conscience is satisfied that there isn't
9 a reasonable doubt of his guilt in order to find
10 him guilty.

11 So you are not to infer that he is guilty just
12 because the facts proved may be consistent with his
13 guilt. But, on the contrary, before there can be
14 a verdict of guilty you must believe from all of
15 the evidence and beyond a reasonable doubt that the
16 facts proved are inconsistent with his innocence.

17 Obviously, if two conclusions can be drawn,
18 one he's guilty and another he's innocent, and if
19 they are both reasonable, then that would not be
20 enough to satisfy the proof that he is guilty beyond
21 a reasonable doubt because, by explanation, there
22 is a reasonable doubt in that case.

23 On the other hand, you can't base your judgment
24 on a merciful hope. For reasonable doubt, as the
25 words imply, is only such doubt as will be entertained

1 by a reasonable man or a reasonable person after an
2 impartial and thorough review of all the evidence
3 and all the facts in the case brought to your atten-
4 tion, as well as a consideration of the absence or
5 lack of evidence. It is a doubt based on reason.

6 Now, the indictment isn't evidence - I told
7 you that. Just because an indictment has been re-
8 turned, that is no evidence of the case.

9 The evidence consists in this case of the
10 sworn testimony of witnesses, exhibits that have
11 been admitted into the record, facts that the
12 lawyers have stipulated to and facts which the
13 Court has judicially noticed; that is, that this
14 fire bomb was not registered.

15 A defendant may be proven guilty by either
16 direct or circumstantial evidence. Direct evidence
17 is the testimony of one who asserts actual knowledge
18 of a fact.

19 An example is, in this case, the testimony of
20 Mr. Duffen. I've forgotten his first name. But he
21 is the man with the beard and the khaki-colored
22 shirt and slacks who came here from Atlanta, where
23 he's a federal prisoner serving a sentence for some
24 offense - I've forgotten what, whether it had to do
25 with narcotics, obtaining money by false pretenses,

1 or what. But it's a felony offense that he has .
2 been sentenced for and is serving.

3 Now, in the course of the evidence, in the
4 portrayal of what may have happened on this night
5 of September 9th and the morning of September 10th,
6 and just before that, Mr. Duffen was apparently not
7 a participant in any of the preparatory conver-
8 sations, he was not brought into it as having any
9 motive. According to his testimony, it was after
10 midnight, somewhere around one o'clock in the
11 morning, that Mr. Johnson and Mr. Hendricks went
12 to his apartment, or where he lived, and he said
13 he was asked by Hendricks to go over and help him
14 throw some fire bombs into Davis' apartment. And
15 that he said no. And that he went down -- I think
16 I guess that he looked from the window and saw
17 Johnson holding up what looked like a fire bomb,
18 and then he went down and looked, and in the next day
19 what he described as being fire bombs.

20 Also, that on the day afterwards, after this
21 fire had occurred, or two days afterwards, he was
22 actually in the apartment and that Mr. Hendricks
23 pointed out to him the small amount of space in
24 which he had to work.

25 I started to talk about Mr. Duffen only for the

1 purpose of illustrating that here was some evidence
2 of actual possession, where you could say that Mr.
3 Hendricks was in actual or constructive possession
4 of those fire bombs if you believe that testimony.
5 Because he saw them in the car that Mr. Hendricks
6 was in and whose operation he was directing. That
7 would be sufficient to establish that he was in
8 possession of those bombs, if you believe it.

9 Now the only thing - I think this has been
10 said to you - that is in issue here is whether he
11 did have possession of fire bombs then. Whether
12 he threw them is not really a question that has
13 to be decided. It has nothing extra to do with
14 the case, except that if you infer from all of the
15 other testimony, if you should believe the testimony
16 that he was motivated and that he wanted to get him
17 and that he bragged about getting him afterwards,
18 you might infer then that he may have been an actual
19 thrower of one of the bombs.

20 But it isn't necessary in this case for the
21 Government to prove that he did that. It is suffi-
22 cient if they prove that he had knowing possession
23 of a fire bomb on September 9th or September 10th
24 of 1973. And I think the Government has taken the
25 position that all of this other is just by way of

1 emphasis in showing that it is probably true that
2 he had possession of a fire bomb.

3 \As I say, I am not trying to indicate one way
4 or another where the truth lies or actually what
5 the evidence is that you will consider.

6 The people who offered direct testimony, or
7 testimony which is circumstantial, with respect to
8 the possession of the fire bombs by Mr. Hendricks,
9 I think all had criminal records - some greater
10 than others. Of course, testimony from people of
11 that kind, with that kind of record, might be open
12 to question. You would want to scrutinize that, as
13 you should, pretty carefully.

14 It does not mean that because anyone has a
15 criminal record that he can't be telling the truth.
16 He might even be telling the truth and trying not to
17 do it, or he might be telling the truth in spite of
18 himself, or it might be a whole cloth of lies. It
19 comes from the kind of a source, though, that I
20 think ordinarily you would scrutinize pretty care-
21 fully in determining how much credibility you are
22 going to give to the testimony of a witness of that
23 kind.

24 Well, that is your function. You know, you
25 don't have to leave your common sense at home when

1 it comes to deciding how much of the testimony of
2 any witness you are going to accept and believe.
3 You don't have to believe any of it, or you can
4 believe all of it. It is up to you. You will
5 have to make your own judgment about that.

6 That's where it happens and I think it has
7 been said who else would know except the people
8 who were involved. And as it happens, the people
9 who were involved, according to the witnesses, all
10 happen to be people - I don't say all; I guess
11 Holly Davis didn't have any record and I don't
12 think Mrs. Johnson had any record, criminal record -
13 but there is a group here who were living the kind
14 of life that I suppose most of us read about only
15 in the newspapers and have very little direct con-
16 tact with. And you are to take that into account
17 in making your judgment as to where the truth lies.

18 So I say you have some things to start with
19 here. You have the fact that there were fire bombs -
20 there's no question about that any more.

21 And I don't think there is much question about
22 the fact that they were thrown into Davis' apartment,
23 or that he was burned, or that so far as this de-
24 fendant is concerned is that he was around that night.
25 He was in a car and traveling around the streets.

1 And I don't think there is much question that
2 he was in the vicinity, very close, shortly after
3 this occurred, that he saw Mr. Davis and his wife
4 as they were on their way to the hospital, and I
5 guess according to him that he was downtown at the
6 Connecticut Lunch room during this time of the night.

7 So it is not wholly without some facts that
8 are not really in dispute. The real dispute is -
9 and this is something you will have to concentrate
10 on - whether or not this defendant, Leo Hendricks,
11 actually had that bomb, one of those bombs, in his
12 possession that night of the 9th or the morning of
13 the 10th.

14 All right. Take this case with you to the
15 jury room. We will send the exhibits in to you.

16 After you get the exhibits, then elect one
17 from your number to act as your foreman or forelady
18 to preside over your deliberations.

19 When you come to deliberate, bear in mind that
20 your verdict must be unanimous. And while you
21 should listen to and discuss with your fellow jurors
22 the questions of what facts are established or not
23 established and pay attention to what they say, in
24 the final analysis it is the individual judgment of
25 each of you that must prevail. It is your own con-

1 science and your own judgment that is what you
2 contribute to the verdict which comes in.

3 So you will listen to each other, talk it over,
4 but each will vote as your own conscience and judg-
5 ment dictates. You have an individual responsibility
6 to do that.

7 There is only one count here.

8 As I say, I want to give these lawyers an
9 opportunity to let me know whether there is some-
10 thing I should have said to you that I haven't, or
11 whether I've said something to you that I shouldn't.
12 I want a few minutes to discuss that with them be-
13 fore you start to elect someone to preside over
14 your deliberations. That will begin as soon as
15 we send the exhibits in to you.

16 We have come to the point now where this is a
17 verdict which has to be unanimous, but it unanimous
18 only by twelve. We have had two Alternates sitting
19 here throughout the trial of the case. But the
20 time has now come when we will have to cut them
21 loose from further consideration of the case.

22 So that Mr. Grodzicki and Mrs. Kowaleski I
23 think are 13 and 14, they are the Alternates, and
24 they will not retire with the others to deliberate.

25 Now, do you have anything in the jury room that

1 you ought to get out of there?

2 THE ALTERNATES: Yes.

3 THE COURT: All right. I will have the Clerk
4 go with you all as you go out so that he can see
5 that you get your belongings, and then you can be
6 excused.

7 So you may walk out now to the jury room.

8 (Whereupon, the jury was excused from the
9 courtroom.)
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1 THE COURT: I propose to let them go to
2 lunch at lunchtime, Mr. Dennis. I haven't told
3 them yet, but I will have the Clerk tell them when
4 he brings the stuff in.

5 Now, are there any objections for the record
6 here?

7 MR. HARTMERE: None on the part of the Govern-
8 ment, your Honor.

9 THE COURT: None on the part of the Government.

10 MR. DENNIS: If your Honor please.

11 THE COURT: Go ahead.

12 MR. DENNIS: I have to take strong exception
13 to the Charge.

14 THE COURT: You take exception to what?

15 MR. DENNIS: To the Charge, your Honor.

16 Particularly the portion of the Charge that
17 indicated that there were fire bombs in the car
18 when Leo Hendricks was in the car.

19 THE COURT: There is testimony that there was.

20 MR. DENNIS: Yes.

21 But I think your Honor created the impression
22 to the jury that all the while certain bottles were
23 in the car, that these were fire bombs, and the
24 jury didn't have to consider whether or not they
25 were fire bombs.

1 THE COURT: I see.

2 MR. DENNIS: I think the only evidence that
3 establishes fire bombs is at the time Evelyn Panna-
4 cino was seen throwing them. These were "bottles"
5 in the car. Nobody knows if they were fire bombs.

6 THE COURT: All right.

7 Is that it?

8 MR. HARTMERE: Your Honor, I don't think that's
9 it. I think the evidence from Duffen establishes
10 that they were fire bombs. He saw them, he saw
11 them intact --

12 MR. DENNIS: But it's a point in question,
13 your Honor.

14 THE COURT: The point he makes, I think, is
15 that I used a little shortcut.

16 I think what Duffen said was that there were
17 bottles, there were rags in them, and that there
18 was the smell of gasoline or kerosene.

19 MR. HARTMERE: That was Johnson, your Honor.
20 Duffen said they were together.

21 THE COURT: They were what? What was together?

22 MR. HARTMERE: He said that the components were
23 all together.

24 THE COURT: Right.

25 MR. HARTMERE: And that Johnson held one up.

1 THE COURT: Yes.

2 MR. HARTMERE: Now, Johnson denied that part.
3 But Duffen said he saw them together and he could
4 smell it and they were fire bombs.

5 THE COURT: I see.

6 MR. DENNIS: Well, he never used the word
7 "fire bombs". He said there was a liquid in there
8 and he smelled gasoline.

9 In any event, it is a point in question and I
10 think the instructions indicated that that was an
11 established fact, which is not the case.

12 THE COURT: That's it?

13 Now, will you check the exhibits to see that
14 they are all right?

15 The indictment need not go in there because
16 it describes both Leo Hendricks and Evelyn Cora
17 Parracino.

18 Is there objection to having the indictment
19 go in in this form?

20 MR. HARTMERE: No, your Honor. I would want
21 it to go in.

22 THE COURT: What is that?

23 MR. HARTMERE: The Government would want it to
24 go in.

25 THE COURT: You want it to go in.

1 Do you have any objection?

2 MR. DENNIS: I have no objection to it going
3 in.

4 THE COURT: Let it go in.

5 All right. Call them out here for a minute
6 to straighten them out about Duffen's testimony.

7 MR. DENNIS: If your Honor please, it is not
8 only with regard to Duffen's testimony, but whether
9 or not the bottles that were in the car were fire
10 bombs, within the meaning of the statute.

11 THE COURT: All right, yes.

12 MR. HARTMERE: But there is testimony that
13 there was, your Honor.

14 THE COURT: What?

15 MR. HARTMERE: That you're only going to tell
16 them that it's a point at issue - is that my under-
17 standing?

18 THE COURT: What is the testimony, that there
19 were?

20 MR. HARTMERE: Yes.

21 THE COURT: From who?

22 MR. HARTMERE: There is testimony from Duffen
23 that there were fire bombs in the car and there is
24 testimony from Johnson that the parts were all there.
25 Maybe not together.

1 THE COURT: All right.

2 MR. HARTMERE: So that is in issue.

3 MR. DENNIS: That is an important point, your
4 Honor, because a fire bomb isn't a fire bomb until
5 all the components --

6 THE COURT: Let's not argue it too much. I'll
7 just tell them.

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1 (In the presence of the jury:)

2 THE COURT: You don't need to go in and take
3 your seat. Just come in. What I have to say is
4 going to be very short. Just get inside here for
5 a second. You don't need to go in and sit down,
6 though, because you are going to go right out.

7 In the Charge I may have given you the impres-
8 sion that what was in the car when Mr. Duffen went
9 down there, I may have said they were fire bombs.
10 As I recall it, nobody made a scientific examina-
11 tion of anything and came in as an expert to say at
12 any particular time that this was a fire bomb.

13 There was evidence as to what it looked like,
14 what it smelled like, and that the ingredients were
15 around at different times. So I didn't mean to
16 decide for you or give you the impression that I
17 had already decided that, in fact, there were fire
18 bombs where Mr. Hendricks was present at any
19 particular time.

20 There is evidence that there were things that
21 might be fire bombs. All right? I'm just not
22 trying to trespass on your function in making the
23 decision that has to be made as to what the facts
24 were.

25 Another thing: When it comes lunchtime, we are

1 going to go to lunch. Now, if you have not reached
2 your verdict by that time, then we will take our
3 regular recess for lunch and then come back and
4 continue to deliberate, if we reach that situation.
5 That is normally the course of action at this stage
6 of a case.

7 THE CLERK: But the Court will notify the jury?

8 THE COURT: Yes, I will let you know when it
9 is time for lunch.

10 All right. Now hand somebody those exhibits.
11 We will be in a state of alert recess - shall we
12 call it that?

13 (Whereupon, court was in recess at 12:50 p.m.)

14 (Court was reconvened at 12:55 p.m.)

15 THE COURT: The jury has submitted a request.
16 It says:

17 "Could we have Duffen's testimony transcribed?"

18 Now, I do not propose to have a transcription
19 of Mr. Duffen's testimony prepared for their study.
20 I've forgotten how extensive his testimony was.
21 It might be that it could be read to them.

22 MR. HARTMERE: That is agreeable to the Govern-
23 ment, your Honor.

24 MR. DENNIS: I would have no objection to that,
25 your Honor.

1 THE COURT: Call them in.

2 (In the presence of the jury:)

3 THE COURT: Have you elected someone as a fore-
4 man?

5 THE FOREMAN: Yes, your Honor.

6 THE COURT: Mr. Higgins.

7 I have before me this note. It says: "Could
8 we have Duffen's testimony transcribed?"

9 Is that right?

10 THE FOREMAN: Yes, sir.

11 THE COURT: Well, we can't transcribe it so
12 that you can read it.

13 THE FOREMAN: Is there some way we could have
14 it, you know, read back to us or something?

15 THE COURT: Yes. We could ask the reporter to
16 read it back.

17 Now before you came in, just by estimating, it
18 appears that that testimony may take about a half
19 an hour to read.

20 As I recall it, considerable part of it had to
21 do with his prior record. Is that the part you are
22 concerned with, or is there particular parts, per-
23 haps?

24 THE FOREMAN: There was one particular part
25 we were interested in mainly.

1 THE COURT: All right.

2 Now, as long as it's all going to be read,
3 or might be read, maybe we could find out what
4 particular part it is; whether it's the part where
5 he testified to going downstairs when Mr. Hendricks
6 first came there, or whether it's the part that has
7 to do with what he said occurred in the Davis'
8 apartment after the bombing had occurred.

9 As I say, I don't want you to specifically
10 identify it for us. But if we could somehow shorten
11 the time, pick out a starting time for what you
12 wanted, and then let us know if we have passed the
13 portion that you wanted to hear.

14 Do you think you can figure out something for
15 us?

16 THE FOREMAN: Yes, we probably can.

17 THE COURT: All right. I'll tell you what we
18 will do, then.

19 We will take our recess now and we will be
20 back at two o'clock, when we will resume. By that
21 time maybe you will have figured out something you
22 could give the reporter as a clue to where to start.

23 THE FOREMAN: Okay.

24 THE COURT: All right.

25 THE FOREMAN: Yes, sir.

1 THE COURT: Now remember, you are not to talk
2 about this case, not even among yourselves, while
3 you are out. No talking and don't let anyone
4 approach you to talk about it.

5 I am not going to sequester you or put you
6 under the protection of a marshal, but I am going
7 to rely upon you to keep your own counsel and that
8 of your fellows.

9 All right. We will take a recess till two
10 o'clock.

11 (Luncheon recess.)
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AFTERNOON SESSION

(In the absence of the jury:)

THE COURT: I suppose this note should be placed in the file.

MR. DENNIS: My client is in the hall somewhere, your Honor.

THE COURT: Does he know that court is going to be in session at two o'clock?

MR. DENNIS: Yes, your Honor. He was right outside the hall a minute or so ago. He might have gone to the men's room. I don't know.

(Pause)

THE COURT: All right. Call the jury.

(In the presence of the jury:)

THE COURT: Well, this asks for a reading of Duffen's testimony from the time he left the apartment to go downstairs to the car and until Johnson and Leo left.

I will make these part of the record.

(Testimony read back.)

THE COURT: Is that the portion you wanted to have read?

THE FOREMAN: Yes. Thank you.

THE COURT: All right. You may retire.

(Whereupon, the jury was excused from the courtroom at 2:06 p.m.)

1 THE COURT: Recess.

2 MR. DENNIS: If your Honor please, there was
3 also Cross-Examination on that point.

4 THE COURT: Do you want the Cross-Examination
5 on that portion read, too?

6 MR. DENNIS: I don't know if the jury wants
7 it or not.

8 THE COURT: Well, the jury said that was
9 sufficient for them. This is the part they wanted
10 to have heard.

11 MR. DENNIS: All right.

12 THE COURT: All right?

13 MR. DENNIS: I won't press it.

14 (Recess.)

15 (At 4:17 p.m., court was reconvened and the
16 following occurred in the absence of the jury:)

17 THE COURT: I have another note. The jury,
18 I guess, is not too experienced. But the note
19 asks two questions:

20 "Could you explain the difference between
21 active and constructive possession?" And "When is
22 a bomb a bomb?"

23 Call the jury.

24 (In the presence of the jury:)

25 THE COURT: I have these two questions here

1 from you. One I will deal with first is: "When
2 is a bomb a bomb?"

3 Well, we had the testimony of a police officer
4 that a Molotov cocktail is a bomb and it's a bomb
5 when you have the ingredients together in one
6 package, that is, a bottle - there was testimony
7 here about Coca Cola bottles - in which there is
8 an inflammable liquid - and we had testimony here
9 about a liquid, kerosene or gasoline, evidence or
10 testimony at least of both; an odor of gasoline,
11 an odor of kerosene at different times. You will
12 recall. And then a wick, which in a Molotov cock-
13 tail is a piece of cloth inserted into the neck
14 of the bottle that contains the inflammable liquid.
15 And the way it works is you light the wick and you
16 throw it, and when the bottle breaks there is at
17 that time an explosion.

18 So it's when they're all together, it isn't
19 having the thing separately, but when you put it
20 together that you have the bomb.

21 And at least at one point in this episode that
22 we have heard evidence about it seems that there is
23 not much dispute over the fact that there was a bomb
24 certainly at the time it went through the window
25 into the apartment of Deflin Davis.

1 All right. So when it's all together, those
2 ingredients, that's a bomb. That's number one.

3 Your other question is: "Could you explain
4 the difference between active and constructive
5 possession?"

6 Active possession is when you have actual
7 physical control; you have it in your hand.

8 Constructive possession would be in a case
9 where a person, though not in actual possession,
10 knowingly has both the power and the intention at
11 a given time to exercise dominion or control over
12 a thing, either directly or through another person
13 or persons. If he does have that power and the
14 intention, then he is in possession.

15 The law recognizes that possession may be
16 sole, in one person, or joint. If one person
17 alone has actual or constructive possession of
18 the thing, possession is sole.

19 I mean you have constructive possession of
20 things that are out in your overcoat or hat that's
21 out there in the jury room. You have the power of
22 control over that.

23 And if two or more persons share actual or
24 constructive possession of the thing, there posses-
25 sion is joint.

1 So if you find from the evidence, beyond a
2 reasonable doubt, that the accused, Leo Hendricks,
3 either alone or jointly with others - and in this
4 case the other -- well, whoever it was - Andrew
5 Johnson at one point certainly from the evidence
6 was one who was together with him when the bombs,
7 if they were bombs, if you find that they were,
8 were in the car.

9 And if you find that evidence to be true as to
10 what was held up by Andrew Johnson with Leo Hendricks
11 right behind him as they look into the bedroom of
12 Evelyn Parracino that afternoon, if you find that
13 at that time those were bombs that he held - and
14 there is evidence from which you may, you are not
15 required to, but you may infer that even at that
16 time Leo Hendricks and Andrew Johnson had joint
17 possession of a thing.

18 There is testimony, I think from Johnson, that
19 he was more or less being directed throughout that
20 evening by Hendricks. That would be evidence from
21 which you might - you are not required to - but
22 which you might infer that Hendricks throughout
23 that whole period during the evening was in control
24 of the bombs, if in fact you find that they were
25 bombs in that car as they were riding around that

1 evening.

2 So if you find from the evidence beyond a
3 reasonable doubt, that is, that you are satisfied
4 beyond a reasonable doubt that the accused, Leo
5 Hendricks, either alone or jointly with others,
6 Johnson or whoever, had actual or constructive
7 possession as I have defined it to you, that is,
8 the power of control of the bomb, then you may
9 find that the bomb was in his possession within
10 the meaning of the word "possession" as used in
11 the statute, which imposes a criminal liability
12 for one in possession of an unregistered bomb.

13 I don't want to make it appear too technical.
14 It isn't. It is a matter of practicality.

15 Is there control? Under those circumstances,
16 did he have the power to control the possession of
17 that bomb, if it was a bomb?

18 I hope that clears it up for you.

19 Now, just before you go out, we are getting
20 along about that time and I don't want you to get
21 too disturbed about the time. There is no intention
22 to rush you in your deliberations. But if you have
23 not completed your deliberations by five o'clock,
24 when we ordinarily end for the day, I will inquire
25 of you then as to whether you wish to remain and

1 complete your deliberations today until you reach
2 a verdict, or whether at that time you want to go
3 home and return tomorrow and resume your delibera-
4 tions then. Clear enough?

5 We are going to blow the whistle on you at
6 five o'clock for today only, not for the case.
7 And then only if that's what you want. So we will
8 give you a chance to put in a little overtime and
9 finish the case, if you want to do that.

10 All right. You may retire again.

11 (Whereupon, the jury was excused from the
12 courtroom.)

13 MR. DENNIS: Your Honor, I would like to take
14 exception to the Court's supplementary charge with
15 regard to actual and constructive possession.

16 I think the way it was put to the jury it was
17 prejudicial to my client in that, first of all, the
18 Court seemed to indicate that mere presence along-
19 side or with somebody who had possession of these
20 bottles - whether or not they were bombs, the jury
21 is obviously having a problem with whether or not
22 they were bombs at a certain point in time - but
23 mere presence, I think the jury should be made aware
24 that mere presence with an individual who has pos-
25 session of something is not sufficient to constitute

1 possession within the meaning of the law.

2 THE COURT: All right.

3 Note it for the record.

4 (Recess.)

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(At 4:40 p.m., in open court, jury present:)

THE CLERK: Will the defendant please rise.

Ladies and gentlemen of the jury, have you reached a verdict?

THE FOREMAN: We have.

THE CLERK: I believe that you have already notified the Court that Mr. Donald Higgins has been elected foreman. Is that correct?

THE FOREMAN: Yes.

THE CLERK: Mr. Higgins, what is the verdict?

THE FOREMAN: The verdict is guilty.

THE CLERK: Ladies and gentlemen of the jury, kindly listen to your verdict as received by the Court:

In the case of United States of America versus Leo Hendricks, Criminal No. H-618, you have found the defendant guilty as charged. Is that your verdict, so say you all?

(Whereupon, the jury responded with a chorus of "Yes".)

THE CLERK: The verdict is guilty, your Honor.

THE COURT: All right. The verdict may be accepted.

MR. DENNIS: Your Honor, may we have the jury polled, please?

1 THE COURT: Poll the jury.

2 (Whereupon, each juror, upon being asked by
3 the Clerk "Is that your verdict" answered with
4 "Guilty".)

5 THE CLERK: Each of the jurors voted "Guilty",
6 your Honor.

7 THE COURT: All right. Each juror has re-
8 sponded "Guilty".

9 The verdict may be accepted and recorded.

10 You are excused from further service until
11 the Clerk gets in touch with you and we have other
12 business for you.

13 You may now retire. Have a nice holiday.

14 (Whereupon, the jury was excused.)
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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF CONNECTICUT

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4 UNITED STATES OF AMERICA :

5 vs. : CRIMINAL H-618

6 LEO HENDRICKS :

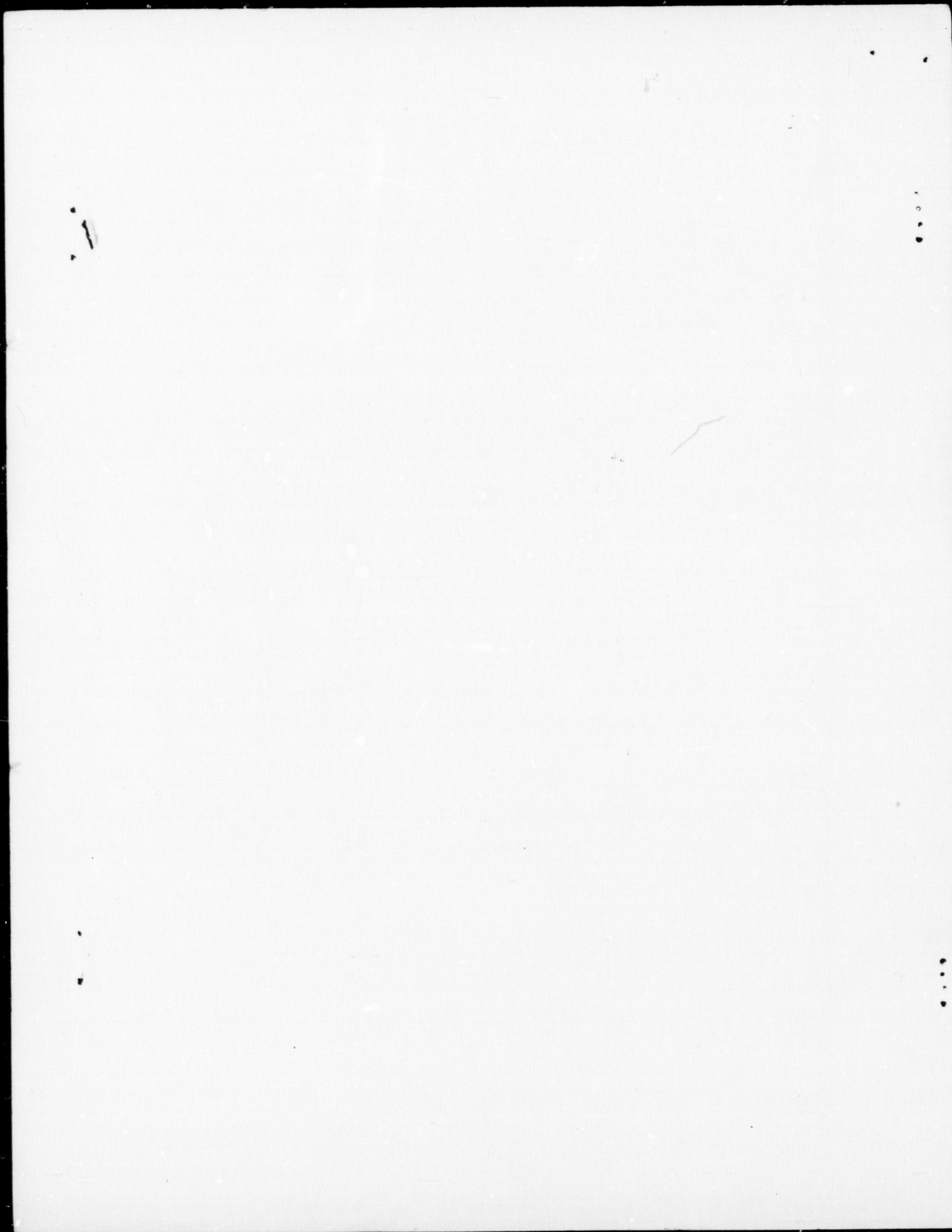
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9
10 COURT REPORTER'S TRANSCRIPT CERTIFICATE

11 I hereby certify that the within and
12 foregoing is a true and accurate transcript of my
13 original stenographic notes taken to record all
14 proceedings in the above-entitled cause, in the
15 United States District Court, for the District of
16 Connecticut, at Hartford, Connecticut, on March 18,
17 19 and 20, 1975, before Hon. M. Joseph Blumenfeld,
18 U.S.D.J., and a Jury of Twelve.

19
20 _____
21 Official Court Reporter

22 DATED: _____, 1975.
23
24
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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 75-1220

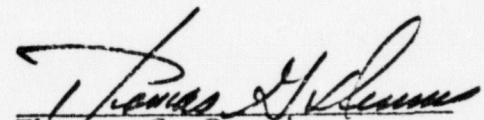
UNITED STATES OF AMERICA
APPELLEE

V.

LEO HENDRICKS
APPELLANT

CERTIFICATION OF SERVICE

I hereby certify that a copy of the Brief
and Appendix of the defendant-appellant in
the above matter was mailed postage prepaid,
to the office of the Assistant United States
Attorney, Michael Hartmere, 915 Lafayette
Square, Bridgeport, Connecticut. Dated at
South Windsor, Connecticut
August 8, 1975.



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Leo Hendricks